

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01655
Hon. David A. Faber

**OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY IN
OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE CERTAIN EXPERT
TESTIMONY OF KATHERINE KEYES**

After a report, two errata sheets, two depositions, a supplemental reliance materials list, and an Opposition brief, Plaintiffs now submit a Surreply that attempts to justify Keyes' opinions based on the supposed findings of *still more* newly-cited scientific papers that Keyes herself failed to cite or discuss in any of the foregoing material. *See* ECF 1182.1, Exhs. B, C.

Plaintiffs' proposed Surreply improperly relies upon additional evidence that, if submitted, Defendants will have been provided no opportunity to comment upon. That in turn would necessitate additional briefing so that Defendants can have an opportunity to comment upon the evidence that Plaintiffs should have, but did not, submit with their Opposition.¹ Enough is enough. The Motion for Leave should be denied.

Dated: December 9, 2020

Respectfully submitted,

/s/ Steven R. Ruby

Michael W. Carey (WVSB No. 635)

Steven R. Ruby (WVSB No. 10752)

David R. Pogue (WVSB No. 10806)

Raymond S. Franks II (WVSB No. 6523)

CAREY DOUGLAS KESSLER & RUBY PLLC

901 Chase Tower, 707 Virginia Street, East

P.O. Box 913

Charleston, WV 25323

Telephone: (304) 345-1234

Facsimile: (304) 342-1105

mwcarey@csdlawfirm.com

sruby@cdkrlaw.com

drpogue@cdkrlaw.com

rsfranks@cdkrlaw.com

¹ By way of example, Plaintiffs contend that their Exhibit C supports the proposition that a direct population count of People Who Inject Drugs ("PWID"), might identify only half of the local persons with an Opioid Use Disorder ("OUD"). *See* ECF 1182.1, at p. 4 fn. 12. Even if that were true, it still would mean Keyes' 2018 OUD population estimate (8,252 people), is 220% larger than reality. *See* ECF 1172, at p. 11, fn. 33. In truth, however, there is no basis for allowing either party to continue the briefing on this point, because the relevant issue is the unreliability of Keyes' methodology, not the wild inaccuracy of the results those methods generate. *Id.* at p. 11 & fn 32.

/s/ Enu Mainigi

Enu Mainigi
F. Lane Heard III
Ashley W. Hardin
Jennifer G. Wicht
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029
emainigi@wc.com
lheard@wc.com
ahardin@wc.com
jwicht@wc.com

Counsel for Cardinal Health, Inc.

/s/ Timothy C. Hester

Timothy C. Hester (DC 370707)
Laura Flahive Wu
Andrew P. Stanner
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
Tel: (202) 662-5324
thester@cov.com
lflahivewu@cov.com
astanner@cov.com

/s/ Paul W. Schmidt

Paul W. Schmidt
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, New York 10018
Tel: (212) 841-1000
pschmidt@cov.com

/s/ Jeffrey M. Wakefield

Jeffrey M. Wakefield (WVSB #3894)
jwakefield@flahertylegal.com
Jason L. Holliday (WVSB #12749)
jholliday@flahertylegal.com
FLAHERTY SENSABAUGH BONASSO PLLC
P.O. Box. 3843
Charleston, WV 25338-3843
Telephone: (304) 345-0200

Counsel for McKesson Corporation

/s/ Gretchen M. Callas

Gretchen M. Callas (WVSB #7136)
JACKSON KELLY PLLC
Post Office Box 553
Charleston, WV 25322
Tel: (304) 340-1000
Fax: (304) 340-1050
gcallas@jacksonkelly.com

/s/ Robert A. Nicholas

Robert A. Nicholas
Shannon E. McClure
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
Tel: (215) 851-8100
Fax: (215) 851-1420
rnicholas@reedsmith.com
smcclure@reedsmith.com

Counsel for AmerisourceBergen Drug Corporation

CERTIFICATE OF SERVICE

I, Steven R. Ruby, counsel for Defendant Cardinal Health, Inc., do hereby certify that on this 9th day of December, 2020, the foregoing **“Opposition to Plaintiffs’ Motion For Leave to File Surreply in Opposition to Defendants’ Motion to Exclude Certain Expert Testimony of Katherine Keyes”** was filed electronically via the CM/ECF electronic filing system and served on all counsel registered in the system.

/s/ Steven R. Ruby
Steven R. Ruby (WVSB #10752)